



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert A. Bovitz, Treasurer
McCotter Congressional Committee
18430 Golfview
Livonia, MI 48152

NOV - 7 2014

RE: MUR 6887
(formerly RR 13L-57)

Dear Mr. Bovitz:

Due to an administrative error, we sent you an unsigned letter and accompanying documents on October 24, 2014, concerning the Federal Election Commission's finding in MUR 6887 (formerly RR 13L-57). Please find enclosed a copy of this letter signed by the Federal Election Commission Chairman and a copy of the accompanying documents.

Sincerely,

A handwritten signature in cursive script that reads "Delbert K. Rigsby".

Delbert K. Rigsby
Attorney

Enclosure
Letter with documents

cc: Thaddeus McCotter
Joseph Xuereb, Esq.



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RE: MUR 6887
(formerly RR 13L-57)

Dear Mr. Bovitz:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting McCotter Congressional Committee and you in your official capacity as treasurer (the "Committee") may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On October 21, 2014, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

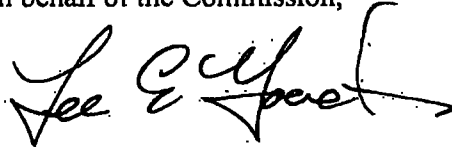
We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) (formerly 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A)), unless you notify the Commission in writing that you wish the investigation to be made public.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a) (formerly 2 U.S.C. § 437g(a)), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Lee E. Goodman", with a long horizontal flourish extending to the right.

Lee E. Goodman
Chairman

Enclosures
Factual and Legal Analysis

cc: Thaddeus McCotter
Joseph Xuereb, Esq.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: McCotter Congressional Committee and Robert A. Bovitz MUR 6887
in his official capacity as treasurer

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. *See* 52 U.S.C. § 30109(a)(2) (formerly 2 U.S.C. § 437g(a)(2)).

II. FACTS

Thaddeus McCotter was a candidate for reelection in the 2012 primary election for the 11th Congressional District of Michigan. He withdrew from the primary on June 2, 2012.¹ At the time McCotter withdrew from the primary, the Committee had received \$60,500 in contributions designated for the general election from 24 separate contributors (13 individuals, 10 multicandidate political action committees, and one federal candidate committee). *See* RAD Referral at 1-3.

On May 17, 2013, RAD sent the Committee a Request for Additional Information ("RFAI") concerning its 2012 October Quarterly Report noting, among other items, that since the candidate did not participate in the general election, any contributions received for that election must be returned to donors within 60 days after the candidate's announcement not to seek office or reelection. *See* RAD Referral at 3. The RFAI also requests that the Committee provide documentation of the refunds. *Id.*

¹ After failing to obtain a sufficient number of valid signatures from registered voters to qualify for the primary ballot, McCotter briefly conducted a write-in campaign before announcing his withdrawal from the primary on June 2, 2012. McCotter resigned from Congress on July 6, 2012. *See* RAD Referral at 3.

On June 18, 2013, the Committee responded to the RFAI by filing a Miscellaneous Electronic Submission ("Form 99") signed by the treasurer, Robert A. Bovitz, which stated in part:

I am unable to address item 1 (refund of general election contributions) of your letter, as I do not had [sic] access to the records and have been unable to get any answers. The extent of my duties was to make sure the reports were filed.

On August 12, 2013, RAD contacted Bovitz to encourage the Committee to resolve the issue relating to the general election contributions, and Bovitz urged RAD to contact the Committee's consultant, Mindy Fernandes, or the Committee's bookkeeper, Randall Thompson, about this issue. *See* RAD Referral at 3. Thereafter, RAD contacted Fernandes who referred RAD to Thompson. *Id.* When RAD spoke with Thompson on August 30, 2013, he stated that the Committee's reporting of its cash-on-hand balance was incorrect and that there were no funds in its account to refund the 2012 general election contributions. *Id.* Thompson later advised RAD that he was examining the Committee's bank statements and comparing them to the disclosure reports in an attempt to identify the cause of the cash-on-hand discrepancy. *Id.* at 4. RAD advised the Committee to clarify the cash discrepancy by submitting a Form 99. *See id.*

On October 17, 2013, the Committee filed a Form 99, which stated, in part:

Please be advised that the Committee has discovered a discrepancy in the cash account. The ending cash on hand was reported as \$22,509.76 per the last report. However, at that point all cash in the bank accounts had been disbursed and in reality there was no cash on hand. The committee is looking into this further to find when and where the discrepancy began and will amend the reports as needed.

Although the Committee later amended its reports to correct the cash-on-hand errors and related misreporting, it has never provided any documentation that it refunded any of the general election contributions.²

The Commission notified the Committee of the referral on January 17, 2014. *See* Letter from Jeff Jordan, Supervisory Att'y, CELA, FEC to Robert A. Bovitz, Treasurer of the Committee (Jan. 14, 2014); *see also Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009). On March 27, 2014, the Commission received a response from counsel for the Committee's treasurer indicating that amended reports had been prepared, establishing where all of the money was spent.³ E-Mail from Joseph Xuereb, counsel for Committee Treasurer, to Donna Rawls, CELA, FEC (Mar. 27, 2014, 03:03 EST). The response does not address the requirement that general election contributions must be refunded, redesignated or reattributed if the candidate does not participate in the general election. *Id.* The Committee did not designate counsel or provide a response to the referral notification.

² The Committee disclosed \$121,152 in cash-on-hand as of June 30, 2012, on its 2012 July Quarterly Report, and has not amended that Report. The Committee originally reported \$40,380 in cash-on hand as of September 30, 2012, on its 2012 October Quarterly Report. On March 27, 2014, the Committee amended its 2012 October Quarterly, 2012 Year-End, 2013 April Quarterly and 2013 July Quarterly Reports to reflect adjustments to its cash-on-hand. It appears that the cash-on-hand discrepancy initially appeared on the 2012 October Quarterly Report and resulted primarily from the failure to report disbursements to two law firms and a fundraising consultant. *See* Amended 2012 October Quarterly Report dated March 27, 2014 at 7, 9, and 10. The Amended 2012 October Quarterly Report disclosed \$17,033 in cash-on-hand as of September 30, 2012. The Amended 2013 April Quarterly and 2013 July Quarterly Reports show a zero cash-on-hand balance.

³ The Committee treasurer, Robert A. Bovitz, is a respondent in this matter only in his official capacity as the designated representative of the Committee. *See* Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 4 (January 3, 2005). Nevertheless, he retained his own separate counsel who does not also represent the Committee. *See* Designation of Counsel form of Robert A. Bovitz dated February 25, 2014 and Bovitz's response dated March 27, 2014.

III. LEGAL ANALYSIS

Under the Federal Election Campaign Act of 1971, as amended, (the "Act"), an individual may not make a contribution to a candidate with respect to any election in excess of the limits at 2 U.S.C. § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)), which were \$2,500 per election during the 2012 election cycle.⁴ A multicandidate political action committee may not make contributions to a candidate in excess of \$5,000 per election.⁵ A primary election and general election are each considered a separate "election" under the Act, and the contribution limits are applied separately with respect to each election.⁶ Candidates and political committees are prohibited from knowingly accepting excessive contributions.⁷

The Commission's regulations permit a candidate's committee to receive contributions for the general election prior to the primary election.⁸ If, however, the candidate does not become a candidate in the general election, the committee must: (1) refund the contributions designated for the general election; (2) redesignate such contributions in accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in accordance with

⁴ See 2 U.S.C. § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)) and 11 C.F.R. § 110.1(b)(1).

⁵ See 2 U.S.C. § 30116(a)(2)(A) (formerly 2 U.S.C. § 441a(a)(2)(A)) and 11 C.F.R. § 110.2(b)(1).

⁶ See 2 U.S.C. §§ 30101(1)(A) and 30116(a)(6) (formerly 2 U.S.C. §§ 431(1)(A) and 441a(a)(6)); 11 C.F.R. §§ 100.2 and 110.1(j).

⁷ See 2 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)).

⁸ See 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.* The committee's records must demonstrate that prior to the primary election, the committee's recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. See 11 C.F.R. § 102.9(e)(2).

11 C.F.R. § 110.1(k)(3).⁹ The committee must do so within 60 days of the date that the committee has actual notice of the need to redesignate, reattribute, or refund the contributions, such as the date the candidate loses the primary or withdraws from the campaign.

Redesignation of general election contributions may only occur to the extent that the amount redesignated does not exceed the contributor's contribution limit for the primary and the amounts redesignated do not exceed the net debts outstanding from the primary.¹⁰ If a committee deposits contributions that exceed its net debts outstanding, it must, within 60 days of accepting the excessive contributions, refund, redesignate or reattribute the excessive contributions.¹¹ Likewise, reattribution of a general election contribution may only occur to the extent that such attribution does not exceed the contributor's contribution limits.¹²

In this matter, the Committee accepted general election contributions totaling \$60,500 that were designated for the 2012 general election but were not redesignated, reattributed or refunded within 60 days after the candidate's June 2, 2012 withdrawal from the primary. *See* 11 C.F.R. § 102.9(e)(3).

Based on the foregoing, the Commission found reason to believe that the McCotter Congressional Committee and Robert A. Bovitz in his official capacity as treasurer violated 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)) by knowingly accepting excessive contributions.

⁹ *See* 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i), 110.2(b)(3)(i).

¹⁰ *See* 11 C.F.R. §§ 110.1(b)(5)(iii) and (b)(3)(i), 110.2(b)(5)(iii) and (b)(3)(i).

¹¹ *See* 11 C.F.R. §§ 110.1(b)(3)(i), 110.2(b)(3)(i); *see also* 11 C.F.R. §§ 110.1(b)(5) and 110.1(k)(3).

¹² *See* 11 C.F.R. § 110.1(k)(3)(ii)(B)(1).